

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

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| Halliburton Company, Halliburton US Technologies, Inc., Halliburton Group Technologies, Inc.<br><br>Plaintiffs,<br><br>v.<br><br>U.S. Well Services, LLC,<br><br>Defendant. | Case No. 6:21-cv-367-ADA<br><br><b>JURY TRIAL DEMANDED</b> |
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**ORDER REGARDING PENDING PRE-TRIAL MOTIONS**

After considering the briefing and the oral argument at the pretrial conference, the Court hereby memorializes the following rulings on the pending motions for the above-captioned case:

**A. Joint Motion for Realignment**

1. Joint Motion for Realignment of Parties (Dkt. 295) was **GRANTED** on July 24, 2023, as shown in Dkt. 398.

**B. Motions For Summary Judgment**

1. USWS's Motion for Partial Summary Judgment of Non-Infringement of '949 and '325 Patents (Dkt. 153) is **DENIED**.
2. USWS's Motion for Summary Judgment of Non-Infringement of '695 Patent (Dkt. 154) was **WITHDRAWN**.

**C. Daubert Motions / Motions to Strike**

1. USWS's Motion to Exclude Opinions of Dr. Hilbert (Dkt. 146) is **DENIED**.
2. USWS's Motion to Exclude Opinions of Ms. Lauren Kindler (Dkt. 147) is **DENIED**.

3. USWS's Motion to Exclude Opinions of Dr. Eiselstein (Dkt. 148) is **DENIED** with Respect to Ground 2. Grounds 1 and 3 were **WITHDRAWN**.
4. USWS's Motion to Exclude Opinions of Dr. Durham (Dkt. 149) was **WITHDRAWN**.
5. USWS's Motion to Exclude Opinions of Dr. Cardi (Dkt. 150) was **WITHDRAWN**.
6. Halliburton's Daubert Motion to Exclude Opinion of Dr. Valerdi (Dkt. 155) is **DENIED**.
7. Halliburton's Daubert Motion to Exclude Opinion of Mr. Ratliff (Dkt. 155) is **DENIED**.
8. Halliburton's Motion to Strike Certain Opinions of Dr. Wooley's Invalidity Report (Unaddressed Claims) (Dkt. 349) is **DENIED**.
9. Halliburton's Daubert Motion to Exclude Certain Opinions of Dr. Gary Wooley (Dkt. 359) is **DENIED**.

#### **D. Joint Pretrial Order**

1. USWS Motion for Leave to File an Amended JPTO (Dkt. 403) to Include Correction of '695 Patent Priority Date to May 6, 2010, is **DENIED**. "With regard to the priority date, it seems to me that that's something that could be taken up during trial and there would be evidence put on as to what the appropriate priority date is, if there's a dispute." Pre-Trial Hearing Transcript at 87:25-88:4.
2. USWS Motion for Leave to File an Amended JPTO (Dkt. 403) to Include Correction of Verdict Form Regarding Unintentionally Omitted '695 Patent Claims is **GRANTED**.

3. USWS Motion for Leave to File an Amended JPTO (Dkt. 403) to Include USWS Assertion of § 101 defense is **DENIED**.
4. Motion for Leave to File an Amended JPTO (Dkt. 403) to Add Witness Alex Christinzio is **GRANTED**.

#### **E. Miscellaneous/Other**

1. USWS Motion to Resolve '325 Patent and '949 Patent Claim Terms for O2 Micro issues will be taken up later. "I'll check with Judge Gilliland. ... But if necessary, we'll have you do briefing, like five pages of briefing, due by the end of next week [August 4]. And I'll take up those claim terms on the same day we have the other [Rule 12(c) Motion to Dismiss] -- rest of that hearing." Pre-Trial Hearing Transcript at 98:4-8.

#### **F. Motions in Limine**

| <b>Joint Motions in <i>Limine</i></b>  | <b>Court's Ruling or Parties' Agreement</b>                                   |
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| <b>Joint MIL 1:</b> Exclude evidence, arguments, or suggestion of a party's overall revenues, total value, or net worth.   | <b><u>AGREED</u></b>  |
| <b>Joint MIL 2:</b> Exclude any argument regarding whether or not any party obtained or could have obtained opinions of counsel.   | <b><u>AGREED</u></b>  |
| <b>Joint MIL 3:</b> The parties shall be precluded from introducing evidence, testimony, or argument regarding pretrial proceedings or issues including but not limited to discovery disputes or dispositive motion practice.    | <b><u>AGREED</u></b>  |
| <b>USWS's Motions in <i>Limine</i></b>   | <b>Court's Ruling or Parties' Agreement</b>                                   |
| <b>USWS's MIL No. 2:</b> Halliburton shall be precluded from introducing any evidence, testimony or argument that refers to any theory of infringement not set forth in Halliburton's Final Infringement Contentions. (Dkt. 246) | <b><u>DENIED</u></b>  |
| <b>USWS's MIL No. 3:</b> Halliburton shall be precluded from introducing any evidence, testimony, or argument that refers to prior   | Granted except with respect to impeaching a witness<br><b>Court's Ruling:</b> |

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| litigations or other proceedings involving USWS's witnesses. (Dkt. 246)   | <p>"If either side wants to use the sworn testimony of a witness that was given in a different proceeding, like an IPR or some other -- as long as it was sworn, then you simply refer to the -- that witness to the fact he gave sworn testimony in another proceeding without saying what the proceeding was, and you can use that to cross-examine the witness with. In that situation, you -- it can come in that way, but not what the proceeding was. And certainly not the outcome of any former proceeding."</p> <p><b>Pre-Trial Hearing Transcript at 101:15-24.</b></p> |
| <b>USWS's MIL No. 4:</b> The Parties shall be precluded from introducing any evidence, testimony, or argument that refers to previously asserted claims that have been withdrawn or held indefinite. (Dkt. 246) | <p><b><u>AGREED</u></b></p> <p>The Parties shall be precluded from any argument that refers to the fact that certain claims or patents were dropped or withdrawn. <i>See</i> Dkt. 296.</p>  |
| <b>USWS's MIL No. 5:</b> Halliburton shall be precluded from introducing any evidence, testimony, or argument that relies on undisclosed opinion testimony from an expert. (Dkt. 246)                           | <p><b>Court's Ruling:</b></p> <p>"That's not a MIL. That's -- the way I handle it, there is no -- that's not a MIL. That's not coming in unless it's in his report." Pre-Trial Hearing Transcript at 102:9-11</p>   |
| <b>USWS's MIL No. 7:</b> Halliburton shall be precluded from introducing any evidence, testimony, or argument that refers to any IPR proceedings. (Dkt. 246)  | <p><b><u>AGREED</u></b></p> <p>The Parties shall be precluded from introducing any evidence and argument that refers to any IPR proceedings. This does not prevent parties from impeaching a witness using any previous declarations submitted in IPRs. <i>See</i> Dkt. 296.</p>  |
| <b>USWS's MIL No. 8:</b> Halliburton shall be precluded from introducing any evidence or making any argument that USWS's alleged infringement was willful. (Dkt. 384)   | <b><u>DENIED</u></b>  |
| <b>Halliburton's Motions in <i>Limine</i></b>   | <b>Court's Ruling or Parties' Agreement</b>   |
| <b>Halliburton's MIL No. 1:</b> Exclude all evidence and argument regarding any alleged non-infringing alternatives not disclosed during fact discovery (Dkt. 245)  | <b><u>GRANTED</u></b>   |
| <b>Halliburton's MIL No. 2:</b> Exclude any non-infringement defenses that were not disclosed during fact discovery (Dkt. 245)  | <b><u>DENIED</u></b>  |

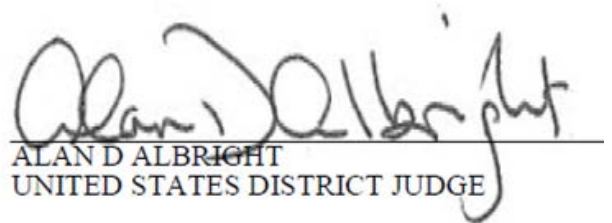
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| <b>Halliburton’s MIL No. 5:</b> Exclude all evidence and argument that USWS does not infringe the Halliburton Asserted Patents because USWS allegedly practices the prior art. (Dkt. 245)  | <b><u>AGREED</u></b><br>Exclude all evidence and argument that USWS does not infringe the Halliburton Asserted Patents because USWS allegedly practices the prior art. <i>See</i> Dkt. 296.   |
| <b>Halliburton’s MIL No. 7:</b> Exclude any reference to 2017 date for ’695 Patent or 2016 date for ’725 Patent (Dkt. 245)   | <b><u>DENIED</u></b>  |
| <b>Halliburton’s MIL No. 9:</b> Exclude any argument that individual claim elements were in the prior art (Dkt. 245)   | <b><u>DENIED</u></b>  |
| <b>Halliburton’s MIL No. 10:</b> Exclude reference to any unasserted prior art reference (Dkt. 245)  | <b>Court’s Ruling:</b><br>“I put this in the bucket of it has to be in the report. So again, it's not a MIL. That's just part of the rules of my court.” <b>Pre-Trial Hearing Transcript at 117:6-8</b>   |
| <b>Halliburton’s MIL No. 11:</b> Exclude claim construction arguments that were not raised during <i>Markman</i> phase (Dkt. 245)  | <b>Court’s Ruling:</b><br>“There will be no construction – there will be no construction arguments during trial. That -- that doesn't happen.” <b>Pre-Trial Hearing Transcript at 117:11-13</b>   |
| <b>Halliburton’s MIL No. 14:</b> Exclude all evidence and argument concerning the parties’ relative size, <u>relative</u> financial position, or <u>relative</u> sophistication (underlined portion added during parties’ conference) (Dkt. 245) | <b>Court’s Ruling:</b><br>“I expect you all to not discuss anything outside of the relevant issues regarding each other's size. I just don't anticipate either one of you saying that Halliburton's evil because they're a big corporation or vice versa.” <b>Pre-Trial Hearing Transcript at 119:5-10.</b> |
| <b>Halliburton’s MIL No. 15:</b> Exclude all evidence and argument suggesting a party’s corporate representative at trial is obligated to prepare on any particular topic or is charged with the knowledge of others (Dkt. 245)                  | <b><u>AGREED</u></b><br>Exclude all evidence and argument suggesting a party’s corporate representative at trial is obligated to prepare on any particular topic or is charged with the knowledge of others. <i>See</i> Dkt. 296.   |

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| <b>Halliburton's MIL No. 16:</b> Exclude all evidence and argument that Halliburton was unable to obtain or did not review AFG's source code (Dkt. 245)                                 | <b><u>GRANTED</u></b><br>Court's Ruling:<br>"I will grant a motion in limine, a true motion in limine, which is you have -- the defendant has to approach the bench and let me know what you're planning to ask. I'm not saying I'm not going to allow it. But if you're going to go into the questions about source code, approach the bench and we'll figure out. Because I'll then have heard what he said on direct and I'll have a better sense of what's fair for the defendant to ask in terms of what impression I think he's given the jury about what he did." <b>Pre-Trial Hearing Transcript at 129:9-14.</b> |
| <b>Halliburton's MIL No. 17:</b> Exclude any testimony from Wayne Wilkinson concerning the operation of AFG's source code for USWS's conventional fleets (Dkt. 245)                     | <b><u>GRANTED</u></b>   |
| <b>Halliburton's MIL No. 18:</b> Exclude evidence, argument, or suggestion that either party's business failures or any impact to stock price were caused by the other party (Dkt. 245) | <b><u>GRANTED</u></b>   |
| <b>Halliburton's MIL No. 19:</b> Exclude arguments in opening statements or expert testimony on direct examination beyond the scope of the experts' Rule 26 reports (Dkt. 245)          | Court's Ruling:<br>"Exclude arguments in opening statements or expert testimony on direct examination beyond the scope. Again, that's -- that is a rule of the Court." <b>Pre-Trial Hearing Transcript at 129:21-25.</b>  |
| <b>Halliburton's MIL No. 21:</b> Exclude any argument and evidence regarding attorneys' fees incurred by either party (Dkt. 245)  | <b><u>AGREED</u></b><br>Exclude any argument and evidence regarding attorneys' fees incurred by either party. <i>See</i> Dkt. 296.  |
| <b>Halliburton's MIL No. 22:</b> Exclude evidence, argument, or suggestion regarding executives and inventors not called as witnesses at trial (Dkt. 245)                               | <b><u>AGREED</u></b><br>Exclude evidence, argument, or suggestion regarding executives and inventors not called as witnesses at trial. <i>See</i> Dkt. 296  |
| <b>Halliburton's MIL No. 23:</b> Exclude any argument that either party does not respect IP rights generally (Dkt. 245)   | <b><u>AGREED</u></b><br>Exclude any argument that either party does not respect IP rights generally. <i>See</i> Dkt. 296  |
| <b>Halliburton's MIL No. 24:</b> Exclude any disparaging remarks or arguments implying that it is improper to assert patents without practicing them (Dkt. 245)                         | <b><u>AGREED</u></b><br>Exclude any disparaging remarks or arguments implying that it is improper to assert patents without practicing them. <i>See</i> Dkt. 296.   |

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| <p><b>Halliburton’s MIL No. 25:</b> Exclude any references to evidence or argument that is inconsistent with the Court’s claim constructions (Dkt. 245)</p>  | <p>Court’s Ruling:<br/> “Exclude any reference to evidence or argument that is inconsistent with the Court’s claim constructions. That’s not a motion in limine. That’s a rule of the Court.” <b>Pre-Trial Hearing Transcript at 130:10-14.</b></p>  |
| <p><b>Halliburton’s MIL No. 26:</b> Exclude any evidence, testimony, argument, or references to any matters not timely disclosed under the Federal Rules of Civil Procedure, the Court’s OGP or Local Rules (Dkt. 245)</p>   | <p><b><u>AGREED</u></b><br/> Exclude any evidence, testimony, argument, or references to any matters not timely disclosed under the Federal Rules of Civil Procedure, the Court’s OGP or Local Rules. <i>See</i> Dkt. 296.</p>   |
| <p><b>Halliburton’s MIL No. 27:</b> Exclude any argument relating to dropped or withdrawn patents or claims (Dkt. 245)</p>   | <p><b><u>AGREED</u></b><br/> The Parties shall be precluded from any argument that refers to the fact that certain claims or patents were dropped or withdrawn. <i>See</i> Dkt. 296.</p>   |
| <p><b>Halliburton’s MIL No. 28:</b> Exclude any argument or suggestion that Halliburton initiated this lawsuit, or that Halliburton’s purpose for pursuing this lawsuit is to slow USWS’s progress or otherwise stifle competition in the marketplace, or that Halliburton is motivated by a desire to harm USWS in the marketplace (Dkt. 308)</p> | <p><b><u>GRANTED</u></b><br/> <br/> “‘No. 28. Exclude any argument or suggestion that Halliburton initiated this lawsuit or that the purpose for pursuing this lawsuit is to slow the progress or otherwise stifle competition in the marketplace. That is granted. Or that Halliburton is motivated by a desire to harm the defendant in the marketplace. That is granted.’”<br/> <br/> “‘Of course, the issue that the companies are competitors is going to come up. ... It’s a fact that your damages expert’s going to take into consideration. That’s a fact that’s fine.’”<br/> <br/> “‘[T]he fact that they’re competitors, you don’t have to approach. . . But I don’t know why it would be relevant — ... bad conduct. But, again, that’s a prophylactic thing. A motion in limine is in place. You can’t do it without approaching the bench. And I’ll have heard the evidence at that point.’”<br/> <br/> <b>Pre-Trial Hearing Transcript at 130:20-132:20</b></p> |

**G. Claim Construction:** During the pre-trial hearing, the parties agreed to adopt the construction for “pumping system” in Claims 1 and 8 of U.S. Patent No. 7,836,949 as “one or more pumps configured to move well treatment fluid.” *See* 7/26/2023 Hr’g Tr. at 12:23-13:13 (“Your honor, we are comfortable with using the Court’s construction from this morning.”).

Signed on 9th day of August, 2023.



ALAN D ALBRIGHT  
UNITED STATES DISTRICT JUDGE